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No. 85-1042

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

MARINE TRANSPORT LINES, INC.,
Petitioner.

v.

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

As explained *infra*, pp. 7-8, none of the "Questions Presented" as stated at p. i of the petition is presented. The only question that *could* be presented—and petitioner has chosen not to present it—is the following:

> Did the Court of Appeals err in the only holding it made: that the fact-finding requirements of Section 7 of the Norris-LaGuardia Act, 29 U.S.C. § 107, are applicable to a request to enjoin a union from filing additional actions in other courts involving claims for unpaid wages owed to its members under a collective bargaining agreement.

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BRIEF IN OPPOSITION

REPORT OF OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit has been reported at 770 F.2d 1526 (11th Cir. 1985). The Order of the United States District Court for the Middle District of Florida, has not been reported, but appears in the Petitioner's Appendix.[1]

JURISDICTION

The judgment of the Court of Appeals, vacating the preliminary injunctions[2], and remanding the cases to the

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[1] References to Petitioner's Appendix will be designated "App." throughout this brief.

[2] A similar injunction was obtained in a separate action by Delta Steamship Lines, Inc., and Respondent's appeals from the injunctions in both cases were consolidated for argument and decision by the Court of Appeals (App. 2a). Delta has not sought review in this Court.

District Court, was entered on September 17, 1985. A Petition For Rehearing, or for Rehearing En Banc, by Marine Transport Lines was denied by the Court of Appeals on November 5, 1985. Petitioner invokes this Court's jurisdiction under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

Petitioner has correctly set forth some of the statutes involved in this proceeding, but has neglected to cite the specific provision of Norris-LaGuardia on which the decision of the Court of Appeals rests. Obviously, that provision is material to consideration of MTL's petition. Section 7 of the Norris-LaGuardia Act, 29 U.S.C. § 107, provides:

> No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—
>
> (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
>
> (b) That substantial and irreparable injury to complainant's property will follow;
>
> (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

> (d) That complainant has no adequate remedy at law; and
>
> (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Petitioner has also neglected to include most of the applicable definitional provisions of the Norris-LaGuardia Act. Section 13 of the Act, 29 U.S.C. § 113, provides:

> When used in this chapter, and for the purposes of this chapter—
>
> (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested therein" (as defined in this section).
>
> (b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any

association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

STATEMENT OF THE CASE

The parties to this action were parties to a collective bargaining contract. That contract covered the unit of licensed deck officers employed aboard sea-going vessels operated by MTL. The contract provided for a wage increase effective June 16, 1983, with a cost of living increase (COLA) in December, 1983. The parties, on June 15, 1983, entered into a written Memorandum of Understanding deferring the wage increase, with MM&P retaining the right to reinstitute unilaterally and retroactively that deferred increased at any time, "as if [it] had not been deferred." The COLA increase was also deferred, on the same basis. On or about June 8, 1984, MM&P notified MTL that the deferred wage increases were reinstituted and that the wages were due.

By August 22, 1984, none of the reinstituted wage increases had been paid. On that day, twenty-two licensed deck officers brought an action for those unpaid wages against MTL in the federal district court in Tampa. Pursuant to traditional admiralty laws, they caused the

vessel upon which they had served[3] to be arrested, to impose a lien for their wages.[4] In addition to the unpaid wages, they also sought penalties under the provisions of the Seaman's Act, 46 U.S.C. § 10504. On August 23, 1984, nine other licensed deck officers who were or had been employed by MTL aboard a different vessel, filed a similar action for unpaid wages and penalties in the federal district court in Houston, and arrested the vessel upon which they had served. Both vessels were promptly bonded and released. In the Florida case MTL posted a bond of $55,000, and in the Texas case MTL posted a bond of $200,000.

On the morning of August 29, 1984, MTL filed the instant action against MM&P. Its Motion For Temporary Restraining Order alleged that the subject matter of the action was a labor dispute, and that MM&P was fostering the arrest of MTL vessels in an effort to force or require MTL to recognize MM&P as the bargaining representative of its supervisors.[5] The District Court orally granted the temporary restraining order that afternoon. The hearing was limited strictly to the Plaintiff's Complaint, Motion, and the argument of counsel. The Court set the matter down for hearing on preliminary injunction on September 6, denying MTL's Motion For Leave To Present Testimony. When the hearing on the Motion For Preliminary Injunction commenced, MTL renewed its Motion For Leave To Present Live Testimony, which the Court then granted.

After hearing the Petitioner's evidence, the Court granted the preliminary injunction requested. Although

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[3] Their periods of service aboard that vessel, during the period June 16, 1983 to June 16, 1984, varied from a few days to five months.

[4] Arresting vessels to secure the payment of seamen's wages has been a practice authorized under admiralty law since the beginning of the republic.

[5] The Motion alleged that MM&P was thereby committing an unfair labor practice under 29 U.S.C. § 158(b)(1)(B).

the Court may have "received evidence" arguably bearing on a number of points urged by MTL, it made no finding that either of the previous actions against MTL had been brought by MM&P. Nor did the Court find that, unless restrained, MM&P would bring any actions, much less that it would "continue its pattern of duplicative litigation" as asserted by MTL (Petition, at p. 6). Contrary to MTL's phrasing of its first question herein, the District Court did not find that "multiple and vexatious lawsuits" had been filed, nor that, unless enjoined, such lawsuits would be filed. Indeed, the Court's factual findings were sparse (App. 11a). Nonetheless, the Court issued a preliminary injunction forbidding MM&P from instituting additional actions in other courts seeking wages for its members who had served on other ships, declaring that it "sees no utility in filing additional lawsuits in other courts thereby causing the arrest of [MTL's] vessels." (App. 11a).

The District Court did not, and did not purport to, make the factual findings specified in Section 7 of the Norris-LaGuardia Act as prerequisites to the issuance of an injunction in a case "involving or growing out of a labor dispute." The District Court declared that the Norris-LaGuardia Act was wholly inapplicable because the parties' mutual perception that the case involved a "labor dispute" was incorrect (App. 9a). The Court reasoned, "this case is essentially nothing more than a dispute over a debt . . ." (App. 10a).

MM&P contended on appeal—as it had in the district court—that, since this case arose out of a labor dispute, Section 4(d) of the Norris-LaGuardia Act precluded issuance of the requested injunction, for that section forbids enjoining persons participating in a labor dispute from:

> "[b]y all lawful means aiding any person participating in or interested in any labor dispute who is being proceeded against in, or is prosecuting,

any action or suit in any court of the United States . . ."

In the alternative, MM&P contended that even if the injunction sought was not forbidden by § 4(d), it could not be issued without the court first making the findings prescribed in Section 7 of Norris-LaGuardia.

The Court of Appeals did not reach or decide the question whether the injunction was forbidden by § 4(d). Declaring that "[w]e need only reach one of MM&P's contentions," the Court of Appeals set aside the injunction because the District Court had failed to make the findings specified in Section 7 of Norris-LaGuardia (App. 4a-7a). During appellate argument, in response to a direct question from Judge Godbold, counsel for MTL had conceded that indeed this case "arose out of a labor dispute". Finding that the District Court's justification for ignoring Section 7 of Norris-LaGuardia—that the case did not arise out of a labor dispute—was erroneous as a matter of law, and that the District Court had failed to make the specific findings prescribed in that section as necessary to establish jurisdiction to enter an injunction, the Court of Appeals vacated the injunction and remanded the action. (App. 4a-7a).

REASONS FOR DENYING THE WRIT

None of the "Questions Presented" in the petition is presented in this case.

1. Contrary to the assertions in the petition, the court below did *not* hold that Norris-LaGuardia precluded issuance of an injunction in this case; it held only that the district court had failed to make the findings that are required by § 7 of Norris-LaGuardia for the issuance of such an injunction. The Court of Appeals declined to reach or decide respondent's contention that § 4 of Norris-LaGuardia forbids issuance of such an injunction. Thus, the first question is not presented.

2. Nor did the Court of Appeals even mention the All Writs Act, 28 U.S.C. § 1651(a), let alone address its

interrelationship with Norris-LaGuardia. The district court had not purported to base its preliminary injunction on the All Writs Act, and had not found that the exceptional circumstances necessary to justify invocation of the All Writs Act were present here. (The District Court's Order Granting Plaintiff's Motion For Preliminary Injunction, which contains its explanation for granting that injunction, appears at App. 8a-12a). Accordingly, the second question is not presented.

3. Nor did the Court of Appeals disregard any findings of fact by the District Court. Its disagreement with the District Court was over the legal question whether this action involves or grows out of a "labor dispute" so that the fact-finding requirements of § 7 of Norris-LaGuardia are applicable. Thus, the third quesion is not presented.

All that the Court of Appeals decided is that § 7 of Norris-LaGuardia is applicable, and requires, as a jurisdictional prerequisite to the issuance of an injunction, certain fact-findings that the district court had not made. Petitioner does not seek review of that holding, indeed does not cite § 7 anywhere in its petition or even acknowledge that that is what the Court of Appeals decided.

Moreover, this litigation may well be moot.

A. Introduction

Despite the broad and expansive language urged by MTL in its Petition for Certiorari, the issue presented in this case is really quite narrow. The Court of Appeals vacated the District Court injunction because the District Court did not make specific factual findings required by § 7 of Norris-LaGuardia. The broader questions urged by MTL necessarily presuppose the establishment of a proper record and the making of proper findings. In their absence, the "Questions" it poses are not ripe for

decision, and they were not decided by the Court of Appeals.

The Court of Appeals' determination that § 7 of the Norris-LaGuardia Act is applicable here—a determination that petitioner does not challenge by its Questions Presented—is firmly grounded in the decisions of this Court. Contrary to MTL's concern, the Court of Appeals' decision does not leave District Courts "powerless." It *does* require them to make decisions based on the evidence and the findings, rather than acting arbitrarily and without record support.

Nor does this case require review because of some perceived inconsistency with the interpretation of federal statutes. MTL conceded below, in its initial moving papers, and again in appellate argument, that this case arose out of a labor dispute within the meaning of the Norris-LaGuardia Act. Its effort to create a factual issue demonstrates how far it has to stretch to create even the appearance of conflict. This Court has broadly defined "labor dispute", and it is plain that a "labor dispute" was involved in this case, at least as the pleadings were drawn and the issue presented to the District Court and the Court of Appeals. The District Court simply avoided Norris-LaGuardia by means of a curious rationale which even MTL can neither explain nor support [6], and made no findings sufficient to support any injunction, much less one that meets the requirements of § 7 of Norris-LaGuardia.

Finally, this dispute would appear to be substantially moot. As noted, the Court of Appeals did not rule out the possibility of injunctive relief, if the need and the basis for such could be shown. It simply reversed a District Court decision which did not make any of the required findings. Should MTL feel that it still requires injunctive relief of this sort, it may return to the District Court, and if it can make the required showing, obtain

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[6] See Petition, p. 18 n.6.

the required findings. Should MTL choose to litigate the broader issues, it must necessarily establish a foundation upon which that argument can rest.

We suspect, however, that MTL will neither need to, nor be able to, make the required showing and obtain the desired findings. In the year and a half which has passed since the injunction was entered, MTL has had more than ample opportunity to pay the wages which it has conceded are owed. If it has done so, then the need for injunctive relief would appear to have vanished. Moreover, during the pendency of this appeal, Congress has repealed the provision for penalty wages applicable to coastwise voyages. Assuming that this retroactive application is upheld, MTL is in little danger of actions seeking penalty wages, or the need to post substantial bonds.[7] Nor has MTL indicated that any other suits have been filed, by any other person. If such a real danger existed, and if MTL were faced with the serious and substantial harm which it asserts as a result of the Court of Appeals decision, it would be in a position to make the appropriate showing to the District Court. Unless and until MTL makes such a showing, there is no need to add to this Court's already overburdened case load.

Accordingly, this Court should deny the Petition For Certiorari.

B. The Court of Appeals correctly determined that the fact-finding requirements of Section 7 of the Norris-LaGuardia Act are applicable to this case

In its Petition For Certiorari, MTL contends strongly that this case does not involve or grow out of a labor dispute. Its first motion for injunctive relief in the District Court, however, begins:

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[7] The District Court has required MTL to file an affidavit on a monthly basis showing its "unencumbered assets" and those have routinely reflected assets in excess of $75 million, currently in excess of $80 million.

> This action arises out of a labor dispute between Plaintiff Marine Transport, Inc. (hereinafter "MTL"), an employer, and Defendant International Organization of Masters, Mates and Pilots (hereinafter "MM&P"), a labor organization.

In its presentations to the District Court, MTL did not dispute that this was a labor dispute, and the District Court's Order reflects that both parties "have addressed this case as a labor dispute" (App. 9a). In argument before the Court of Appeals, in response to a direct and specific question, counsel for MTL conceded that indeed this case did arise out of a labor dispute.

As this Court recently observed in *Jacksonville Bulk Terminals v. International Longshoremans Association*, 457 U.S. 702 (1982), broad scope should be given to the application of Norris-LaGuardia, particularly in determining whether the action constitutes a "case involving or growing out of any labor dispute":

> Our decisions have recognized that the term "labor dispute" must not be narrowly construed because the statutory definition itself is extremely broad and because Congress deliberately included a broad definition to over-rule judicial decisions that had unduly restricted the Clayton Act's labor exemption from the anti-trust laws. For example in *Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 369, 4 L.Ed.2d 797, 80 S.Ct. 779 (1960), the court observed:
>
> > "Th[e] Act's language is broad. The language is broad because *Congress was intent upon taking the federal courts out of the labor injunction business* except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act . . ."

Jacksonville Bulk Terminals, supra, 457 U.S. at 711-12 (emphasis added).

Although MTL contends that the District Court found that there was no dispute between the parties as to the

applicable terms and conditions of employment, the District Court did *not* make such finding. It found that the parties agreed that MTL owed the seamen money, that the amount that was owed was likely very much in dispute (App. 10a), and that MTL had not paid it (*id.*). The Court of Appeals correctly observed:

> [A] "controversy concerning a term or condition of employment" need not concern whether to create such a term but can simply concern the enforcement of an extant term. [App. 5a].

The Court of Appeals went on to observe:

> Indeed a dispute is no less a controversy concerning a term of employment because it "may be resolved or determined on its merits by reference to the terms of a collective bargaining agreement". *United Electrical Radio and Machine Workers of America v. General Electric Co.*, 233 F.2d 85, 90-91 (1st Cir. 1956), aff'd on other grounds, 353 U.S. 547, 77 S.Ct. 921, 1 L.Ed.2d 1028 (1957); *W.L. Meade, Inc. v. Int'l Brotherhood of Teamsters*, 217 F.2d 6, 8 (1st Cir. 1954), or because the court has decided the dispute by way of a declaratory judgment (which one party has refused to obey). *Alcoa S.S. Co. v. McMahon*, 173 F.2d 567, 568 (2d Cir. 1949. [App. 6a].

In other words, since the obligation to pay the wages, and the determination of the amount of wages due, arise out of the collective bargaining agreement, the fact that one party admits that *some* wages are due does not preclude the controversy being in the nature of one "arising out of a labor dispute". Even accepting MTL's version of the "factual" finding of the District Court (which we believe the Court of Appeals did), this was a "labor dispute" as a matter of law.

Since this was clearly a case which should be "held to involve or to grow out of" a labor dispute, the provisions of Norris-LaGuardia apply. Primarily these involve the absolute prohibition of Section 4(d) against enjoining

assisting in litigation, and also the requirement of Section 7 for specific findings. The Court of Appeals found that the District Court had failed to make the fact-findings required by Section 7, and did not address or decide the application of § 4(d).

MTL contends that the All Writs Act gives the District Court jurisdiction to enter injunctive relief. But the All Writs Act would be applicable only if certain exceptional circumstances were present, and the district court, which did not cite the All Writs Act, made no finding that such circumstances existed here, indeed recognized that these were valid suits for wages that were in fact owed.[8] Rather, the district court regarded itself as issuing an ordinary preliminary injunction, and applied the quite different standards applicable to such an injunction (App. 10a-11a). In any event, MTL has suggested no reason why the fact-finding requirements of § 7 of the Norris-LaGuardia Act should not be applicable to labor injunctions sought under the All Writs Act, nor has it cited a single case that has ever so held.

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[8] MTL asserts, in its Petition (at 10), that an injunction can issue under the All Writs Act where the litigant has engaged in a pattern of vexatious and harassing litigation, *and* where the litigation has imposed a burden on the court system, *and* where it appears that the pattern of vexatious litigation will continue. The District Court made no findings that MM&P has engaged in any litigation, much less that it was vexatious and harassing (or even that the suits filed by the individual seamen were vexatious and harassing). Indeed, suits by seamen for unpaid wages, and arrest of their vessel as security for payment, have been their traditional means of collection throughout our Nation's history. And as the District Court here recognized, the claims were valid: MTL owed wages to its seamen. There was no finding that the litigation had already imposed any burden on the judicial system. Nor did the court make any finding that additional lawsuits were likely to be filed. It simply observed that "the court sees no utility in filing additional lawsuits in other courts thereby causing the arrest of the plaintiff's vessels." (App. 11a).

C. The Court of Appeals correctly found that the District Court made none of the findings required to establish its jurisdiction

Since the Norris-LaGuardia Act applies, it follows that the fact-finding requirements of Section 7 must be met. The District Court made no such findings, and the Court of Appeals correctly vacated the injunction because of the absence of such findings. Contrary to what MTL contends or believes, the District Court did not find that any unlawful acts had occurred, or that unless restrained they would occur, and did not even find that the previous arrests had been effected or caused by MM&P.[9] Nor did it find that there would be substantial and irreparable injury, that the injury to petitioner from denial of an injunction would outweigh that to respondent from its issuance, that complainant had no adequate remedy at law, or that public officers were unable or unwilling to protect complainant's property.

Although MTL now contends that the District Court injunction is carefully limited, and does not preclude MM&P from assisting its members in other actions, MTL attempted to persuade the District Court to stop suits against it, and the District Court indicated that its intention was to prevent the filing of further suits. However, MTL never proved, and the District Court never found, that MM&P had filed any of the other actions, or that unless restrained further actions were likely to occur. In another context, this Court, addressing the question of irreparable injury, or the likelihood of future occurrences, furnished this colorful explanation of the applicable principle:

> "Our Brother Harlan appears to concede that the State Bar has neither alleged nor proved that the Union has engaged in the past, is presently engaging, or plans to engage, in the sharing of legal fees.

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[9] *Cf. O'Shea v. Littleton*, 412 U.S. 488, 502 (1974), cited with approval in *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

> Nonetheless, he suggests that the injunction against such conduct is justified in order to remove any "temptations" for the Union to participate in such activities. We cannot accept this novel concept of equity jurisdiction that would open the courts to claims for injunctions against "temptation" and would deem potential "temptation" to be a sufficient basis for the issuance of an injunction. Indeed, it would appear that jurisdiction over "temptation" has heretofore been reserved to the churches.
>
> An injunction can issue only after the plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant, if not enjoined, would engage in such conduct."

United Transportation Union v. The State Bar of Michigan, 401 U.S. 576, 583-4 (1971).

The District Court did not even make the findings that would be required to support a preliminary injunction *not* governed by Norris-LaGuardia. In its Order, the District Court listed the four criteria established by the Eleventh Circuit for the issuance of preliminary injunctions,[10] but then failed to find that any of those criteria had been met. (App. 10a-11a). At appellate argument, the Court of Appeals expressed incredulity that the injunction could have been issued in the absence of a showing 1) that action had occurred or was likely to occur absent injunction, 2) that the action was caused by or would be caused by the party to be enjoined, 3) that the action sought to be enjoined was unlawful or improper, and 4) that the movant would suffer irreparable injury and had no adequate remedy at law. Despite all of MTL's hyperbole, there is simply no record basis for this Court to conclude that the proper basis for any injunction has been established, much less an injunction unsupported by the particularized findings required by § 7 of the Norris-LaGuardia Act.

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[10] *United States v. Jefferson County*, 720 F.2d 1151 (11th Cir. 1983).

D. This case may be moot

Despite the calamity projected by MTL, there is no substantial issue presented at this time. During the intervening year and a half, MTL has likely paid most, if not all, of the unpaid wages, or at least had more than ample opportunity to do so. Coupled with the retroactive repeal of the penalty wage statute applicable to coastwise vessels, it is hardly likely that MTL will be barraged by a plethora of lawsuits and vessel arrests. Even assuming, arguendo, that such might occur, MTL has ample recourse to the particular court in which the action is filed, or even to the District Court below, to make out a proper case for relief. There is simply no need for this Court to now consider an issue which has not arisen, and which indeed may not arise.

CONCLUSION

Since the underlying dispute over the payment of retroactive wages was properly held "to involve or to grow out of" a labor dispute, Section 7 of the Norris-LaGuardia applied. The Court of Appeals correctly determined that the District Court had failed to make necessary findings to establish its jurisdiction and properly vacated the injunction. MTL has shown no basis for this Court to reverse.

This case simply does not present the issues stated in Petitioner's "Questions Presented," let alone an issue which is appropriate for consideration by this Court. The Petition For Certiorari should be denied.

Respectfully submitted,

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